IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Appeal No.899-DB of 2003

Date of Decision :- November 9, 2006

Kuldip Singh alias Babu Singh ....APPELLANT

VERSUS

The State of Punjab ....RESPONDENT

CORAM: HON'BLE MR. JUSTICE MEHTAB S.GILL
HON'BLE MR. JUSTICE BALDEV SINGH

Present:- Mr. B.S.Sidhu, Advocate for the appellant.

Mr. S.S.Randhawa, Senior D.A.G. Punjab.

MEHTAB S.GILL, J.

This is an appeal against the judgment dated 17.9.2003 of the learned Sessions Judge, Faridkot whereby he convicted Kuldip Singh alias Babu Singh son of Gurdial Singh under Sections 302 and 307 IPC. Appellant was sentenced to undergo life imprisonment and to pay a fine of Rs. 10,000/- under Section 302 IPC and to undergo rigorous imprisonment for 10 years and to pay a fine of Rs. 5,000/- under Section 307 IPC. In

default to further undergo rigorous imprisonment for one year under Section 302 IPC and rigorous imprisonment for six months under Section 307 IPC. Both the sentences were ordered to run concurrently.

The case of the prosecution is unfolded by the statement Ex.PJ of Jaswinder Singh, given to ASI Surjit Singh at Guru Gobind Singh Medical College Hospital, Faridkot at 9.15 p.m. Jaswinder Singh stated that he is a resident of Village Hari Nau. He was friendly with Jagjit Singh resident of Guru Ki Dhab. Jagjit Singh was constructing a house in Village Guru Ki Dhab where Jaswinder Singh was staying for the last 4-5 days to help him in the construction. On 30.3.2000 at about 5.00 p.m., Jaswinder Singh along with Jagjit Singh had come to Kotkapura town on a motor cycle, which was driven by Jagjit Singh and Jaswinder Singh was sitting on the pillion. At about 6-7 p.m. when they reached near a petrol pump on Muktsar road, a boy of the age of Jaswinder Singh stopped their motorcycle and sat behind. He was known to Jagjit Singh. His name was Sarabjit Singh alias Sonu. As they started, a truck going towards Muktsar from Kotkapura hit their motorcycle. They along with the motorcycle fell down and came under the truck and received injuries. The registration number of the truck being PB-04C-9737. Babu Singh son of Dial Singh was its driver. Jaswinder Singh and others were brought to the hospital. Babu Singh, the truck driver caused injuries to them by mounting the truck over them by driving it in a rash and negligent manner. On the basis of this statement, FIR Ex.PJ/1 was recorded on the same day at 10.00 p.m. at Police Station Kotkapura under Sections 304-A/279/337/338 IPC. The

special report reached the C.J.M., Fardikot by post on 30.3.2000 at 10.10 a.m.

The prosecution to prove its case brought into the witness box Gurbachan Singh Draftsman as PW1, Dr. Birinder Singh as PW2, Sanjiv Kumar Clerk as PW3, Amarjit Singh Clerk as PW4, HC Manjit Singh as PW5, HC Basant Singh as PW6, Manjit Kaur PW7, Mohinder Singh as PW8, Iqbal Singh as PW9, Gurbachan Singh Draftsman as PW10, Jagjit Singh as PW11, Jagsir Singh as PW12, Pawan Kumar as PW13, Dr. Rajan Singla as PW14, Sub Inspector Darshan Singh as PW15, Sham Lal Photographer as PW16, Dr. Naveen Bansal as PW17, ASI Surjit Singh as PW18.

Learned counsel for the appellant has argued, that at the most, it is a case of an accident and not that of murder. Manjit Kaur PW5, the mother of the deceased was present when the deceased was picked up and taken to the Civil Hospital, Kotkapura. She did not make a statement to police on the day of the incident i.e. on 30.3.2000 or the next day that her son was intentionally murdered by the appellant. It was on 11.4.2000 i.e. after a gap of 11 days that she stated before the Superintendent of Police that her son was murdered. There was a dispute between one Jagsir Singh with the appellant. Her son Sonu had taken away a Kapa belonging to the appellant and had run away during that fight. Appellant ran after her son Sonu so that he could recover the Kapa back. Her son did not return it. Though this motive was revealed by Manjit Kaur after a gap of 11 days, but taking away the Kapa, if believed, was a very trivial matter. Appellant

would not have murdered Sarabjit Singh alias Sonu for this reason. The prosecution version is that Jagjit Singh PW11, Jaswinder Singh the complainant and deceased Sonu were going on a motorcycle. Jaswinder Singh has not been produced to give credence to the statement of Jagjit Singh PW11. Jagjit Singh PW11, the injured witness has not supported the prosecution case. In the FIR Ex.PJ/1, Jaswinder Singh has stated that the appellant drove the truck in a rash and negligent manner and no intention on the part of the appellant has been mentioned to commit the murder of the deceased. Mohinder Singh PW8 and Iqbal Singh PW9, both the eye witnesses have stated in the Court, that Sonu died on the spot. There was no question of his telling anything to his mother Manjit Kaur PW7. The oral dying declaration as propounded by Manjit Kaur PW7, is not truthful. The intention of the appellant was not mala fide, as after the accident as per the prosecution case, appellant parked the truck on the side. If his intention was to commit murder, then he would have drove with the truck away so that he could run away. Learned counsel for the appellant has relied upon a judgment of the Hon'ble Supreme Court in **Satnam Singh Vs. State of Rajasthan, 2000(1) RCR (Criminal) page 211,** wherein the Hon'ble Supreme Court has held that if the prosecution failed to prove intention of the accused to kill the deceased, conviction cannot be sustained under Section 302 IPC, but the accused can be convicted under Section 304-A IPC.

Learned counsel for the State has argued, that the Investigating Officers SI Darshan Singh PW15 and ASI Surjit Singh PW18

were dishonest from the beginning. They deliberately and purposely did not register the case under Section 302 IPC, but to help the appellant registered the case under Section 304-A IPC. Mohinder Singh PW8 and Iqbal Singh PW9 supported the case of the prosecution and have stated that after hitting the motorcycle, appellant brought the truck back to overrun them. Thus it is clear that the intention of the appellant was to kill deceased Sonu and others. Mohinder Singh PW8 thereafter informed Majit Kaur. She came to the spot and it is thereafter that Sonu was taken to the Civil Hospital. The presence of Manjit Kaur PW7 has been conceded in the statement of Dr. Rajan Singla PW14 of Civil Hospital, Kotkapura. There is no delay in lodging of the FIR as the occurrence had taken place at 6/7 p.m. on 30.3.2000 and the FIR was registered on the same day at 10.00 p.m. in the Police Station, Kotkapura.

We have heard the learned counsel for the parties and perused the record with their assistance.

Jaswinder Singh in the FIR Ex.PJ/1 has stated, that appellant Babu Singh had caused injuries to them by driving the truck in a rash and negligent manner. Mohinder Singh PW8 and Iqbal Singh PW9, the two eye witnesses to the occurrence have stated, that after hitting the motorcycle from the back, all three riders fell down, then the appellant brought the truck back and again hit Sonu deceased with his truck. Thereafter, he took the truck ahead and parked it near the petrol pump near the Telephone Exchange. This statement on the part of both these eye witnesses i.e. Mohinder Singh PW8 and Iqbal Singh PW9 is not truthful.

Criminal Appeal No.899-DB of 2003

It is an improvement made by them to show that it was not an accident, but a murder. If the appellant had brought the truck back after hitting the deceased and his companions, the truck would have crushed not only Sonu, but also Jagjit Singh PW11 and Jaswinder Singh, the propounder of the FIR. Jagjit Singh PW11, though an injured witness, has not supported the case of the prosecution. He has not identified the appellant in Court. Jaswinder Singh the propounder of the FIR, was not produced, the public prosecutor gave him up as having been won over by the accused. Simlilarly, the statement of Majit Kaur PW7 does not get corroboration qua the oral dying declaration. Both Mohinder Singh PW8 and Jagjit Singh PW11 have stated, that Sonu died at the spot. Thus, the question of his making a statement did not arise. It is after 11 days that Manjit Kaur PW7 gave a statement before the Superintendent of Police that her son had been murdered. The motive being that the deceased had run away with a Kapa is not believable. Appellant would not have gone to this extent of murdering Sonu on such a trivial matter.

The conduct of the appellant cannot be overlooked. As stated by the prosecution witnesses, that after hitting the motorcycle appellant stopped his truck on the roadside at a petrol pump. This clearly shows that he did not have any intention to run away. If it was murder, the appellant would have run away after committing the offence. But in the case in hand, he parked his truck on the side. As per the statement of Amarjit Singh Clerk PW4, truck No. PB-04C-9737 is owned by appellant Kuldip Singh alias Babu Singh son of Gurdial Singh.

Criminal Appeal No.899-DB of 2003

Dr. Birinder Singh PW2 in his testimony before the Court has stated, that it is correct that when he had written the post mortem report in the column of information furnished by the police, he has written that Sonu had died of a road accident as per the police papers. Similarly, Dr. Naveen Bansal PW17 in his testimony before the Court has stated, that Sonu was brought to DMC Hospital by his father Bant Singh. Surinder Singh who accompanied the injured, gave the history that the patient met with a road accident when he was coming on a motorcycle and the said motorcycle met with an accident with a truck at Kotkapura around 6.30 p.m. on 30.3.2000. Ex.DX was the history sheet of the patient. It is clear from the testimony of Dr. Birinder Singh PW2, Dr. Naveen Bansal PW17 and FIR Ex.PJ/1 which are the documents prepared at the first instance that Sarabjit Singh alias Sonu died due to an accident. The murder theory came up after a gap of 11 days only to falsely implicate the appellant. Learned counsel for the appellant has relied upon a judgment of the Hon'ble Supreme Court in **Satnam Singh'case** (supra). The judgment applies to the case in hand on all fours.

As per the observations and discussion, conviction and sentence under Sections 302 and 307 IPC is set aside. Appellant is convicted under Sections 304-A and 338 IPC. Under Section 304-A IPC, appellant is sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs. one lac to the mother of the deceased Manjit Kaur PW7. In default of payment of fine, he shall undergo rigorous imprisonment for six months. Further the appellant is sentenced to

undergo rigorous imprisonment for two years and to pay a fine of Rs. 40,000/- under Section 338 IPC. In default of payment of fine, he shall undergo rigorous imprisonment for six months. Fine of Rs.40,000/- shall be distributed equally to both injured Jagjit Singh PW11 and Jaswinder Singh. Both the sentences shall run concurrently.

With the above modification in conviction and sentence, appeal is dismissed.

(MEHTAB S.GILL)
JUDGE

(BALDEV SINGH)
JUDGE

November 9, 2006
SKA

WHETHER TO BE REFERRED TO REPORTER? YES/NO